IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 29.08.2007

CORAM

THE HONOURABLE MR. JUSTICE S.J.MUKHOPADHAYA
AND
THE HONOURABLE MR. JUSTICE V.DHANAPALAN

W.A. NO. 1151 OF 2006
AND
M.P. NO. 2 OF 2006

Minor P.Athulya
rep. by Father & Natural
Guardian
N.Pavithran .. Appellant

- Vs -

1. Deputy Tahsildar (Revenue)
   Taluk Office, Mahe
   U.T. of Pondicherry.

2. Centralised Admission Committee (CENTAC)
   rep. by Convener
   Pondicherry Engineering College Campus
   Pondicherry - 14.

3. Miss M.Anjana

4. The Dean
   Sri Lakshminarayana Institute
   of Medical Sciences, Pondicherry. .. Respondents

Writ Appeal filed under clause 15 of letters patent against the order dated 11th Aug., 2006, passed by the learned single Judge in W.P. No.24762 of 2006 as stated therein under Article 226 constitution of India writ of certiorarified mandamus calling for the records of the 1st respondent in No.59/STOM/T3/MISC/05 dated on 25.07.06 to quash the same and direct the first respondent to issue a certificate of residence in Form F as prescribed in the Information Bulleting 2006-07 of the second respondent.

For Appellant : Mr. G.Rajagopal, SC, for Mr.A.Vijayakumar

For Respondents: Mr. G.Masilamani, SC, for
M/s. G.Mani Associates for RR-3 & 4
Mr. K.K.Sasidharan, GP (Pondy) for RR-1 & 2

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JUDGMENT

S.J.MUKHOPADHAYA, J.

The appellant, who studied for seven years in Jawahar Navodhya Residential School, Palloor, Mahe, a region within the Union Territory of Pondicherry, claimed reservation as resident of 'Mahe' for admission in engineering course through Joint Entrance Test, 2006, held by the Central Admission Committee of the Government of Pondicherry. Having not allowed such benefit of reservation on the ground that she is not a resident of Mahe, unsuccessfully challenged the order passed by the 1st respondent in No.59/STOM/T3/Misc/05 dated 25th July, 2006, giving rise to the present appeal.

2. According to the appellant, she was born on 19th Aug., 1988, in Mahe region of Union Territory of Pondicherry, brought up at Mahe, having studied from Pre-KG to 5th standard and 6th standard to 12th standard. She studied 6th to 12th standard at Jawahar Navodhya Residential School at Mahe, as a resident student and the said school did not admit students unless they are local residents. She has obtained birth certificate on 4th May, 1994, and residential certificate issued by the 1st respondent on 26th May, 1994. According to her, she is entitled for reservation as per prospectus - Information Bulletin circulated vide Central Admission Committee, Pondicherry, for admission in engineering college, being resident of Mahe, but she has been denied such benefit of reservation.

On the other hand, according to the first respondent, status of appellant, is that of a minor and is a resident of Kerala on the basis of which she appears to have already moved the Kerala educational authorities for the purpose of getting admission in MBBS course. In Kerala she applied for grant of community certificate to the Tahsildar of Thalacherry Taluk in which she clearly specified her place of residence to be Chokli Manepram Taluk and her permanent village and resident place to be Menapram Desam, Chokli Amsam, Kerala. She had claimed her residence at the said address on the ground that she was residing there for about 18 years and sought for grant of community certificate on the basis of sworn declaration that information given in her application are true and she put her signature on the declaration. The grant of community certificate is also supported by report of village officer, Chokli Peringaudi, which is to the effect of certifying that the appellant, Ms.Athulya of Valiaparampath, Chokli Amsam was born and brought up as permanent resident with her parents in the said address at Kerala. The Tahsildar also certified that the appellant, Ms.Athulya belongs to Chokli Amsam, Menapram Desam, Kannanor District, Kerala, included in the list of other backward communities of Kerala State.

Learned counsel appearing on behalf of the Union Territory of Pondicherry submitted that the appellant's parents are also residing at Kerala and the appellant studied from a residential school and was lodged in the school hostel.

Learned counsel for the appellant, while placed reliance on birth certificate and residential certificate, referred to the provisions of reservation as mentioned in the prospectus - Information Bulletin of Joint Entrance Test, 2006.

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3. Before discussion of relevant provisions of reservation, it is desirable to notice the geographical position of the Union Territory of Pondicherry. It consists of three regions, namely, 'Karaikal' region, bordering Tamil Nadu; 'Mahe' region bordering Kerala and 'Yanam' region bordering Andhra Pradesh. While some seats have been reserved for candidates, who are domicile of Union Territory of Pondicherry, special regional allocation (reservation) has been made for all three regions of 'Karaikal', 'Mahe' and 'Yanam'. For Union Territory of Pondicherry candidates, in Government sponsored colleges, details of reservation and special allocation was made as follows :-

"5. DETAILS OF RESERVATION AND SPECIAL ALLOCATION

5.1 For Pondicherry UT Candidates in Government Sponsored Colleges

Reservations in admission to various degree courses offered by Government Sponsored Colleges for Pondicherry UT candidates belonging to different categories are given below :

Reservation	% of Reservation
Scheduled Caste (SC) – Applicable for Origin SC Candidates only	16
Most Backward Classes (MBC) and Other Backward Classes (OBC) (a ratio of 60:40 as quantum of reservation for MBC and OBC respectively out of overall reservation of 33%)	33 (20 + 13)
Children/Grand Children of Freedom Fighter (FF)*	4
Physically Handicapped (PH)*	3
Ex-Servicemen/Widows of Ex-Servicemen/Wards of Ex-Servicemen, Defence Personnal, Para-Military Force (DP)*	1
Candidates who are excellent in Sports (SP)*	1

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Special Allocation Category	Number of Seats						
	B.Tech	BDS	BVSc &AH	BPharm	Bsc (Nursing)	BPT	Bsc (MLT)
Candidates from Karaikal Region *	21	-	-	9	9	2	2
Candidates from Mahe Region *	7	1	1	2	2	1	1
Candidates from Yanam Region *	7	1	1	2	2	1	1

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From the aforesaid chart it will be evident that apart from vertical and horizontal reservation, special regional allocation has been made.

4. Clause 2.6 deals with Union Territory of Pondicherry candidates. Sub-clause (a) and (b) of Clause 2.6, which are relevant, are as quoted hereunder :-

> "2.6 Pondicherry UT Candidates
>
> Candidates belonging to Pondicherry UT are eligible for admission to all the degree courses. A candidate is considered as a Pondicherry UT Candidate if he/she satisfies at least one of the following domicile criteria.
>
> a) Those candidates or whose parents have been residing continuously in the Pondicherry UT at least for 5 years immediately before the date of application..
>
> b) Those who have passed SSLC/HSC or any other public examination and for that purpose had undergone academic studies continuously for 5 successive classes immediately preceding the qualifying examination (including the year of the qualifying examination) in recognised educational institution(s) located in Pondicherry UT and having their residence in Pondicherry UT for 5 years continuously during that period.
>
> * * * * * * *"

Special regional allocation for residents of 'Karaikal', 'Mahe' and 'Yanam' has been made at Clause 5.1.7, as reproduced hereunder :-

> "5.1.7 Special Regional Allocation for Karaikal, Mahe and Yanam
>
> Candidates claiming admission under this category should be residents of the respective region for a continuous period of 5 years preceding the date of application.
>
> To claim admission under special allocation from Karaikal, Mahe and Yanam regions, candidates should have studied in the recognised schools located in the respective regions continuously for 3 years immediately preceding the qualifying examination (including the year of the qualifying examination).
>
> These candidates should enclose the necessary certificate in the prescribed format only (enclosed in in the bulletin).
>
> The certificate should be obtained from The Head of the Institution in which they studied, and countersigned by respective Chief Educational Officers of Karaikal and Mahe Region and Regional Administrator of Yanam Region. They also should enclose residence certificate issued by an officer of the Revenue Department not below the rank of Deputy Tahsildar in the respective regions clearly indicating the address of residence.
>
> NOTE : i) Residence/Regional/Special Allocation once claimed in the application will not be changed under any circumstances:
>
> ii) All the claims for residence/regional/special allocation should be made in the proper format and should be signed by competent authorities specified."

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5. Clause 2.6, which deals with Union Territory of Pondicherry candidates, stipulates satisfaction of atleast one of the 'Domicile' criteria. Even if a candidate is not a permanent resident of Union Territory of Pondicherry, as per sub-clause (a), if the candidate is residing continuously in the Union Territory of Pondicherry atleast for five years, can be treated to be a Pondicherry Union Territory candidate. In case, the parents are residing in the Union Territory of Pondicherry for five years, their children could also claim for reservation as Pondicherry Union Territory candidate under the said sub-clause (a) of clause 2.6. Those who have passed SSLC/HSC or any other public examination and undergone academic studies continuously for five successive classes and having their residence in Union Territory of Pondicherry for five years continuously during that period, could also claim to be Union Territory of Pondicherry candidates.

6. In this background, the appellant having studied in Jawahar Navodhaya Residential School, Mahe, a region of Union Territory of Pondicherry, for more than five years, if she has been granted residential certificate on 26th March, 1994, she is entitled to get benefit under clause 2.6.

7. Now the question is whether the appellant could also claim special regional allocation as a resident of 'Mahe' under clause 5.1.7. As per the said provision, 'Domicile' is not the criteria, but the criteria is resident of the region for a continuous period of five years preceding the date of application. One could also claim the same if the candidate is a resident of one of the three regions and studied in a recognised school located in the respective region continuously for three years immediately preceding the qualifying examination. There is a difference between those who claim benefit under the Pondicherry Union Territory and those who can claim benefit under the special regional allocation. All candidates, who are residents of one of the three regions, if resided continuously for five years preceding the date of application or studied in the recognised school located in such region continuously for three years immediately preceding the qualifying examination, they will be treated to be Pondicherry Union Territory candidates, but all Pondicherry Union Territory candidates cannot claim for special regional allocation, if they do not qualify the test of clause 5.1.7.

If the phraseology of drafting of those two clauses, namely, clause 2.6 and 5.1.7 is noticed, it will be evident that two different phraseology has been made showing the intention of the authority, i.e., (i) clause 2.6 for all those resided in the Union Territory of Pondicherry, whether in one or other region or in Pondicherry itself, if fulfils the criteria as laid down thereunder and will be treated to be 'domicile' of Union Territory of Pondicherry. The other clause, 5.1.7 do not talk of domicile, but 'resident' of the particular region, 'Karaikal', 'Mahe' and 'Yanam', for which a different criteria has been prescribed by the authorities. While clause 2.6 is controlled by the word "Domicile", clause 5.1.7 is controlled by the word "Resident", though sub-clause (a) of clause 2.6 takes in its fold all candidates or parents, who have been "residing" continuously in the Union Territory of Pondicherry. Sub-clause (b) of clause 2.6 deals with those having "residence" in Pondicherry Union Territory. In clause 2.6, the word "Residing" and "Residence" have been used in a different context than the word "Resident" as used in clause 5.1.7. Therefore, it is clear that for formation of sentence in different

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clauses, one terminology has been used, but with different meaning. The context for which such word has been used could be derived from the intention of the authorities as may appear from its plain meaning.

8. Mr.Masilamani, learned senior counsel for respondents 3 to 6, while relied on different decisions of the Supreme Court, also made comparative analysis of clause 2.6 and clause 5.1.7 as follows :-

"Comparative Analysis :

1) UT of Pondicherry Candidate (UTP) : Candidate or Parent must be continuously residing for 5 preceding years of date of application. Condition is not mandatory.

Karaikal, Mahe and Yanam candidate (KMY) : Candidate must be a resident for 5 preceding years of date of application. Condition is mandatory.

2) UTP : Candidates should have undergone academic studies for 5 successive classes including SSLC/HSC or other public examination immediately preceding qualifying examination in the region (including year of qualifying exam). This condition is only one of the domicile criteria, not mandatory.

KMY : Candidates must have studied in recognised schools in the region continuously for 3 years immediately preceding qualifying examination (including year of qualifying exam). This condition is mandatory.

3) UTP : Lays down "Domicile" criteria, where satisfaction of any one condition will suffice.

KMY : All the conditions must be satisfied and Certificate from Head of Institution where candidate studied and Residence Certificate is insisted for proof."

The meaning of "Resident", "Residence" and "Domicile", as shown in different dictionaries have also been highlighted, some of which are mentioned hereunder :-

"RESIDENT :

1. Someone who lives in a place, not a visitor - Collins English Learner's Dictionary.
2. Permanent inhabitant - Concise Oxford Dictionary.
3. One who resides or dwells in a place - Webster's Dictionary.

RESIDENCE :

1. House; Home - Collins English Learner's Dictionary.
2. a. Act or an instance of residing
   b. the place where a person resides
   c. A home - Concise Oxford Dictionary.
3. The place or the house one resides - Webster's Dictionary.

DOMICILE :

1. House where a person lives - Collins English Learner's Dictionary.
2. a. A dwelling place
   b. One's home
   c. The fact of residing
   d. A place of permanent residence - Concise Oxford Dictionary.
3. A house, home or dwelling - Webster's Dictionary."

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9. In the case of Smt. Jeewanti Pandey – Vs – Kishan Chandra Pandey reported in (1981) 4 SCC 517, the Supreme Court considered the meaning of "Residence" and the word "Resides", at para-12 and 13 of the judgment, and quoted hereunder :-

> "12. In order to give jurisdiction on the ground of "residence", something more than a temporary stay is required. It must be more or less of a permanent character, and of such a nature that the court in which the respondent is sued, is his natural forum. The word "resides" is by no means free from all ambiguity and is capable of a variety of meanings according to the circumstances to which it is made applicable and the context in which it is found. It is capable of being understood in its ordinary sense of having one's own dwelling permanently, as well as in its extended sense. In its ordinary sense "residence" is more or less of a permanent character. The expression "resides" means to make an abode for a considerable time; to dwell permanently or for a length of time; to have a settled abode for a time. It is the place where a person has fixed home or abode. In Webster's Dictionary , "to reside" has been defined as meaning "to dwell permanently or for any length of time", and words like "dwelling place" or "abode" are held to be synonymous. Where there is such fixed home or such abode at one place the person cannot be said to reside at any other place where he had gone on a casual or temporary visit, e.g. for health or business or for a change. If a person lives with his wife and children, in an established home, his legal and actual place of residence is the same. If a person has no established home and is compelled to live in hotels, boarding houses are houses of others, his actual and physical habitation is the place where he actually or personally resides.
>
> 13. It is plain in the context of clause (ii) of Section 19 of the Act, that the word "resides" must mean the actual place of residence and not a legal or constructive residence; it certainly does not connote the place of origin. The word "resides" is a flexible one and has many shades of meaning, but it must take its colour and content from the context in which it appears and cannot be read in isolation. It follows that it was the actual residence of the appellant, at the commencement of the proceedings, that had to be considered for determining whether the District Judge, Almora, had jurisdiction, or not. That being so, the High Court was clearly in error in upholding the finding of the learned District Judge that he had jurisdiction to entertain and try the petition for annulment of marriage filed by the respondent under Section 12 of the Act."

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The meaning of "Resident" and "Residence" also fell for consideration before the Supreme Court in the case of Bhagwan Dass – Vs – Kamal Abrol reported in (2005) 11 SCC 66. That was a case relating to grant of dealership of LPG. One of the eligibility criteria was, the candidate should be resident of the district concerned. In the said case, while the Supreme Court held that the candidate must be a de facto resident of the district and should not have mere casual connection with the district, made the following observation :-

> 6. The word "resident" is in common usage and many definitions were attributed to it in different decisions. Nevertheless, it is difficult to give an exact definition for the term is flexible, elastic and somewhat ambiguous. The meaning of the word "resident" in itself creates certain doubts. It does not have any technical meaning and no fixed meaning would be applicable in all the facts and circumstances. It is used in various senses and has received various interpretations by the courts. Generally, the construction of the term is governed by the connection in which it is used and it is dependent on the context of the subject-matter, and the object, the purpose or result designed to be accompanied by its use, and the meaning has to be adduced from the facts and circumstances taken together in each particular case. The word "resident" as defined in Oxford Dictionary is " to dwell permanently or for considerable time, to have one's stay or usual abode, to live in or at a particular place ". Similarly, Webster's Dictionary has defined it as " to dwell permanently and for any length of time " and words like dwelling place or abode are held to be synonymous. From the above it can be seen that the term "residence" makes it clear that the word "residents" includes two types which are: (1) a permanent residence, and (2) a temporary residence. First type of residence forms all the permanent dwelling which means that the person has settled down at a particular place permanently and regularly for some purpose. The second type refers to a situation that the person is not residing at a place forever but residing at a place for a temporary period or not for a considerable length of time. This is also referred to as a temporary living in a place. Hence, in one place the word "residence" is interpreted in the strict sense to include only permanent living at a place which may be referred to as domicile and in the second place the word is interpreted in the flexible sense to show a temporary or tentative residence.
>
> * * * * * * * *
>
> 9. The Court has further said in para 13 that it is plain in the context of clause (ii) of Section 19 of the Act, that the word "resides" meant actual place of residence and not a legal or constructive residence. It clearly does not indicate the place of origin. The word residence is flexible and has many shades of meaning but it must take

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its colour and content from the context in which it appears and it cannot be read in isolation. By this decision another dimension was added to the concept of residence in the form of concept of de facto residence and the concept of de jure residence . The Supreme Court in this case has clearly distinguished between the concept of actual residence or de facto residence and legal residence or de jure residence . The actual residence means the place where the person is residing actually at a given point of time. On the other hand concept of de jure residence or the legal residence means the place at which the person is residing in law. The latter form of residence may or may not be the actual residence or the place where the person actually stays or resides. A person holding property or land in a particular place or city or having some ancestral roots in the city may be a resident of that particular place in the legal sense, but his actual residence will be the place where he is presently residing and coupled with the fact of animus manendi or an intention to stay for a considerable period. The concept of de facto and de jure residence can also be understood by the following example. If a person suppose has the residency certificate of a place say 'A', but actually for his living he stays at the place 'B', then de jure he can be said to be the resident of place 'A' but de facto he is the resident of the place 'B'."

In the said case, the Supreme Court having noticed necessary eligibility criteria of resident of a district and the advertisement inviting application having not defined the same, held that "it would be necessary to see the intention of the framers of the eligibility criteria to understand the true meaning or the sense for which the word "residence" is used or as to why the criteria of "residence" is put as an eligibility criteria .....".

In Pradeep Jain – Vs – Union of India reported in (1984) 3 SCC 654, while the Supreme Court observed that the Constitution recognised only one domicile, noticed that almost in all States of our country, sometime the requirement is phrased under different meanings and held as follows :-

7. Now there are in our country in almost all States residence requirements for admission to a medical college. Sometimes the requirement is phrased by saying that the applicant must have his domicile in the State. We must protest against the use of the word 'domicile' in relation to a State within the Union of India. The word 'domicile' is to identify the personal law by which an individual is governed in respect of various matters such as the essential validity of a marriage, the effect of marriage on t he proprietary rights of husband and wife, jurisdiction in divorce and nullity of marriage, illegitimacy, legitimation and adoption and testamentary and intestate succession to moveables. "Domicile" as pointed out in Halsbury's Laws of England (Fourth Edition) Volume 8, para 421, "is the legal relationship between an individual and a territory with a distinctive legal system which invokes that system as his personal law". (Emphasis

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supplied.) It is well settled that the domicile of a person is in that country in which he either has or is deemed by law to have his permanent home. "By domicile" said Lord Cranworth in Whicker v. Hume "we mean home, the permanent home". The notion which lies at the root of the concept of domicile is that of permanent home. But it is basically a legal concept for the purpose of determining what is the personal law applicable to an individual and even if an individual has no permanent home, he is invested with a domicile by law. There are two main classes of domicile: domicile of origin that is communicated by operation of law to each person at birth, that is, the domicile of his father or his mother according as he is legitimate or illegitimate and domicile of choice which every person of full age is free to acquire in substitution for that which he presently possesses. The domicile of origin attaches to an individual by birth while the domicile of choice is acquired by residence in a territory subject to a distinctive legal system, with the intention to reside there permanently or indefinitely. Now the area of domicile, whether it be domicile of origin or domicile of choice, is the country which has the distinctive legal system and not merely the particular place in the country where the individual resides."

10. In the present case, we have discussed the two different criteria as mentioned in clause 2.6 and 5.1.7, both of which relates to those who are Domicile/Residing in the Union Territory of Pondicherry and residents of one or other region of Pondicherry Union Territory. It has already been seen that the Union Territory of Pondicherry includes the three regions of 'Karaikal', 'Mahe' and 'Yanam', but the three regions do not include Pondicherry. The intention of the framers of the eligibility criteria, thus, is clear from clause 5.1.7, that the said special regional allocation criteria is meant for those, who are not only actually residing for last five years or studied continuously for three years on the date of application but must be a permanent resident of the region.

As it has not been disputed by the appellant that the appellant obtained certificate from the State of Kerala that she is a resident of Manepram Desam, Chokli Amsam, Kerala, coupled with the fact that the appellant was studying in Jawahar Navodhaya Residential School, a residential school from its hostel, it will be clear that the resident certificate dated 26th May, 1994, granted to her by the 1st respondent, though make her eligible as Pondicherry Union Territory candidate for the purpose of clause 2.6, but she cannot be treated to be a resident of Mahe region for the purpose of getting benefit of special regional allocation under clause 5.1.7.

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11. For the reasons aforesaid, no interference is called for with the order dated 11th Aug., 2006, passed by the learned single Judge in W.P. No.24762 of 2006. There being no merit, the writ appeal is dismissed. Consequently, connected miscellaneous petition is also dismissed. However, there shall be no order as to costs.

GLN

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. Deputy Tahsildar (Revenue)
   Taluk Office
   Mahe
   U.T. of Pondicherry.

2. The Convener
   Centralised Admission Committee (CENTAC)
   Pondicherry Engineering College Campus
   Pondicherry – 14.

+1 cc to The M/s.G.R.Associates, Sr.No.53776.

+1 cc to The Government Pleader (Pondy) Sr.No.53969.

MS(CO)
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